

Residential Properties (First-hand Sales) Bill

Administration's Response to Issues Raised by Members at the Bills Committee Meeting held on 24 April 2012

At the meeting of the Bills Committee on the Residential Properties (First-hand Sales) Bill (the Bill) held on 24 April 2012, Members raised enquires on a number of issues relating to the Bill. The Administration's responses are set out below.

(1) To provide in tabular form the Administration's response to all submissions on the Bill, including those from deputations not attending the meeting.

2. The Administration's responses to the deputations' submissions to the Bills Committee, including the written submissions and comments made by deputations at the Bills Committee meeting on 24 April 2012, are at **Annex**.

(2) To advise the feasibility of enacting the Bill by phases with a view to ensuring the passage of major provisions within the current legislative term.

3. The Bill provides a holistic and effective framework to regulate all major aspects relating to the sale of first-hand residential properties situated in Hong Kong. Each and every part of the Bill work together to form an integral part of the regulatory framework. The effectiveness and the deterrent effect of the Bill in ensuring the transparency and fairness in the sales of first-hand residential properties will be adversely affected if some parts are missing or are not being brought into operation concurrently. We consider it undesirable and not practical to enact the Bill by phases.

(3) To endeavour to work out a standardized definition of "gross floor area" for inclusion in the Bill.

4. The challenge of coming up with a standardized gross floor area (GFA) for a property is to get all the key stakeholders (such as the Hong Kong Institute of Surveyors, the Hong Kong Institute of Architects, the Law Society of Hong Kong, the Real Estate developers Association of Hong Kong and the Consumer Council) to come to agree with a definition. To come up with a standardized definition on GFA per property, it is necessary for all the key stakeholders to agree upon the types of common areas in a residential development which should be counted towards the GFA for a property, and the measurement method for each and every type of those common areas as agreed to be counted towards GFA per property.

5. It took a few years for the key stakeholders to work out a standardized definition of saleable area (SA) for a property. We expect that it will take far longer for the key stakeholders to agree upon a standardized definition of GFA per property, given there are many parameters to consider. Taking into account that the public will like to see the early enactment of the Bill, and that it is highly unlikely that a definition for GFA can be worked out within the current legislative term, we remain of the view that SA should be the only basis to present property price and property size in sales brochure, price list and advertisements under the proposed legislation.

6. We wish to point out that we are not proposing to disallow the disclosure of information beyond the SA in the sales of first-hand residential properties. Nor are we depriving the public or prospective buyers of any area information. Rather, we require vendors to present floor area information to the public in a clearer though different manner. While flat size and flat price per square foot/metre will not be allowed to be quoted on the basis of GFA under the Bill, vendors will be required to provide area information on common facilities (e.g. resident's clubhouse) on an aggregate basis in the sales brochures. Also, vendors will be required under the Bill to provide in the sales brochure and price list the area of those features which the owners of a residential property will have exclusive use, namely an air-conditioning plant room, a bay window, a cockloft, a flat roof, a garden, a parking space, a roof, a stairhood, a

terrace and a yard. This will enable flat purchasers to know exactly (i) the SA of a residential property, (ii) the area of those features which the owners of a residential property will have exclusive use; and (iii) holistically the types and sizes of common facilities in the development.

Transport and Housing Bureau
May 2012

Bills Committee on Residential Properties (First-hand Sales) Bill
The Administration's Response to Submissions to the Bills Committee

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(A) General Comments

Organizations/Individuals	Comments/Issues	Government's Response
Centaline Property Agency Limited	<ul style="list-style-type: none">• Support regulating the sale of first-hand residential properties by legislation.	<ul style="list-style-type: none">• Noted.
Civic Party		
Consumer Council		
Designing Hong Kong Limited		
Hong Kong Chamber of Professional Property Consultants Limited		
Hong Kong Institute of Real Estate Administrators		
Hong Kong Professionals and Senior Executives Association		
Property Agencies Association Limited		
The Hong Kong Institute of Architects		

(A) General Comments

Organizations/Individuals	Comments/Issues	Government's Response
The Hong Kong Institute of Estate Agents		
The Hong Kong Institute of Surveyors		
The Law Society of Hong Kong	<ul style="list-style-type: none">• Support the objectives of the proposed legislation.	<ul style="list-style-type: none">• Noted.
New People's Party	<ul style="list-style-type: none">• Support in principle that there is a need to strengthen the regulation of the sale of first-hand residential properties. Suggest setting up a Tribunal to handle the relevant complaint cases before resorting to legislative means.	<ul style="list-style-type: none">• Feedback received during the public consultation exercise showed there was a clear consensus that the sale of first-hand residential properties should be regulated by legislation to enhance protection for flat purchasers, and that the proposed legislation should be enacted as soon as possible.
Professional Property Services Limited	<ul style="list-style-type: none">• Support the legislative proposals in general.	<ul style="list-style-type: none">• Noted.
The Real Estate Developers Association of Hong Kong	<ul style="list-style-type: none">• No objection in principle to the proposed legislation to regulate the sale of first-hand residential properties if the measures are reasonable, proportionate and rationally connected with the legitimate aim and purpose (i.e. to protect prospective purchasers of first-hand residential	<ul style="list-style-type: none">• We consider the legislative proposals to regulate the sale of first-hand residential properties are pursuing the legislative aim of protecting purchasers' interests and the means of regulation are not disproportionate to that aim.

(A) General Comments		
Organizations/Individuals	Comments/Issues	Government's Response
	properties) and are no more than necessary.	
Swire Properties	<ul style="list-style-type: none"> • Support any measures that will enhance transparency and clarity for purchasers of first-hand residential properties. 	<ul style="list-style-type: none"> • Noted.
Mr YEUNG Wai-sing (Member of the Eastern District Council)	<ul style="list-style-type: none"> • Support regulating the sale of first-hand residential properties by legislation. 	

(B) Scope of the Bill		
Organizations/Individuals	Comments/Issues	Government's Response
The Hong Kong Conveyancing and Property Law Association Limited	<ul style="list-style-type: none"> The protection in the Bill should be extended later to non-residential properties and second-hand residential properties. 	<ul style="list-style-type: none"> The Bill aims to enhance consumer protection of first-hand residential properties buyers. We propose that both first-hand uncompleted and completed residential properties should be regulated because, from the perspective of enhancing consumer protection, we see little difference between the two. In most of the cases of the sale of first-hand residential properties, regardless of whether the properties are uncompleted or completed, the vendors (i.e. developers) and individual purchasers are not on an equal footing. The former is always in a much stronger position vis-a-vis the latter in terms of resources and bargaining power. Not only do vendors hold first-hand residential properties in bulk, they also possess and control the release of information relating to those properties and their sales arrangements. On the other hand, second-hand residential properties are often owned by private individuals. As such, the vendor and the purchaser are generally on an equal footing in the
Designing Hong Kong Limited	<ul style="list-style-type: none"> Apart from first-hand residential properties, consideration should be given to regulating the sales of all properties, including those in the secondary market. 	
The Real Estate Developers Association of Hong Kong Swire Properties	<ul style="list-style-type: none"> Completed first-hand residential properties and second-hand residential properties are the same. Should not regulate first-hand completed residential properties since second-hand residential properties are not regulated by the proposed legislation. 	

		<p>sale of second-hand residential properties.</p> <ul style="list-style-type: none">• It is quite common for the vendor to start selling residential properties during the construction period and continue to do so in respect of the remaining residential properties upon completion. To draw a line between first-hand uncompleted and completed residential properties in terms of legislative control is artificial and not defensible.• We consider it crucial that purchasers of first-hand residential properties have access to a full range of information for making informed decisions. While the availability of completed residential properties for viewing may help flat purchasers visualize the size, layout and orientation of a flat, there are other key pieces of information regarding a development which flat purchasers also require, such as price lists and transaction information. The fact that purchasers of first-hand completed residential properties may have the opportunity to view completed residential properties and the actual environment of the development does not justify exempting the sale of first-hand residential properties from the legislation.
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(C) Exemption Arrangements under the Bill		
Organizations/Individuals	Comments/Issues	Government's Response
The Hong Kong Conveyancing and Property Law Association Limited	<ul style="list-style-type: none"> Suggest that for the sale of residential properties to sitting tenants who have lived in the residential properties for at least a year, not only sales brochure but also price list should be provided to the prospective purchasers unless he/she agrees that there is no need to provide such materials. 	<ul style="list-style-type: none"> Under clause 56 of the Bill, when a vendor sells or offers to sell a first-hand residential property to an existing tenant who has been the tenant of that property for a continuous period of at least one year, the vendor will be exempted from the requirements on sales brochures if the buyer who is the existing tenant of the property agrees not to be provided with a sales brochure. That said, the vendor is required to provide the buyer with a Vendor's Information Form as prescribed in Schedule 8 to the Bill, and comply with other parts of the Bill. We consider the proposed exemption has struck a balance between practicality and protecting the consumer interest of sitting tenants.
The Real Estate Developers Association of Hong Kong	<ul style="list-style-type: none"> The threshold for exemption under "sale of residential properties to existing tenants" should be lowered. 	<ul style="list-style-type: none"> If a vendor offers to sell a residential property to the sitting tenant only, but not to any other person, there is no strong reason to require the vendor to publish a price list on that particular residential property for public's reference. We consider there is no need to require the vendor to provide a price list for the residential property if the buyer is the sitting tenant.

(C) Exemption Arrangements under the Bill		
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<p>Property Agencies Association Limited</p> <p>The Hong Kong Conveyancing and Property Law Association Limited</p> <p>The Real Estate Developers Association of Hong Kong</p>	<ul style="list-style-type: none"> Object to the exemption for Hong Kong Housing Authority (HA). 	<ul style="list-style-type: none"> We propose that subsidized housing developments that are constructed by HA, namely, the new and residual Home Ownership Scheme (HOS) flats, should be excluded from the scope of the legislation, having regard to the fact that HOS flats are subsidized flats and that HA has to follow set parameters to dispose of those flats (in terms of determining the target group, setting of sale price, and determining flat allocation quotas and selection priorities among different categories of eligible applicants, etc.) which are completely different from normal private market practice. For example, when selling HOS flats, HA makes public the total number of HOS flats to be offered for sale and the selling prices of all the flats one to two months before the commencement of flat selection (whereas private developers will normally release first-hand residential properties for sale in small batches and release a price list three days prior to the commencement of sale). The HA receives applications within a prescribed period and determines the flat selection priority of different categories of eligible applicants by a balloting

(C) Exemption Arrangements under the Bill

Organizations/Individuals	Comments/Issues	Government's Response
		<p>system (whereas private developers of first-hand residential developments will normally accept reservation of residential properties before commencement of sale and they do not have a balloting system to determine the order of priority). There is simply no financial or other reason for the HA not to provide accurate and comprehensive information in the process.</p> <ul style="list-style-type: none"><li data-bbox="1288 703 2078 1171">• The Bill is targeted at the malpractices of vendors in the sale of first-hand residential properties in the private market. The requirements are formulated having taken into account the mode of sale of first-hand residential property market. Many of the requirements cannot fit squarely into the mode of sale of HOS flats, which are completely different from normal private market practice. We remain of the view that developments constructed by HA should be exempted from the proposed legislation.<li data-bbox="1288 1235 2078 1410">• HA has observed the administrative regulatory measures applicable to the sale of uncompleted first-hand residential properties in the sale of surplus HOS flats in the past. Even though HA will not be

(C) Exemption Arrangements under the Bill		
Organizations/Individuals	Comments/Issues	Government's Response
		covered by the proposed legislation, it will sell HOS flats in accordance with the applicable requirements under the proposed legislation in future as far as practicable.
The Law Society of Hong Kong	<ul style="list-style-type: none"> It is impractical and unrealistic to grant exemption to a development where 95% or more of the residential properties have been leased out for 36 months. Suggest lowering the threshold for exemption. 	<ul style="list-style-type: none"> We see the need to set a higher threshold to ensure that a vendor will not simply withhold the sale of a development for a relatively short period of time in order to circumvent legislative control.
<p>The Law Society of Hong Kong</p> <p>The Real Estate Developers Association of Hong Kong</p>	<ul style="list-style-type: none"> Other special circumstances which justify exemption (e.g. distribution of flats between family members, intra-group transfer between a company and its subsidiary company). 	<ul style="list-style-type: none"> We note there may be cases that a company which owns a first-hand residential development in totality may, for various business reasons, sell the residential properties in that development exclusively to one or more than one of its associate corporations or holding companies. If the sales involve more than one single agreement for sale and purchase (e.g. a separate agreement for sale and purchase for each associate corporation or holding companies), they will not be exempted from the requirements on sales brochures, price lists and sales arrangements etc under the Bill as currently drafted.

(C) Exemption Arrangements under the Bill		
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		<ul style="list-style-type: none"> • Also, we note there may be cases that an owner of a first-hand residential development in totality may, for various reasons, sell the residential properties in that development exclusively to his/her family members. If the sales involve more than one single agreement for sale and purchase (e.g. a separate agreement for sale and purchase for each individual family member), they will not be exempted from the requirements on sales brochures, price lists and sales arrangements etc under the Bill as currently drafted. • It is not the policy intention to require the aforementioned sales to be subject to the Bill. We will consider not to require the sale of first-hand residential properties among family members (to be defined), and the sale of first-hand residential properties between a body corporate and an associate corporation or a holding company of the body corporate, to make available sales brochure, price lists, and register of transactions. However, when the residential properties are subsequently offered for sale to the general public, they will have

(C) Exemption Arrangements under the Bill		
Organizations/Individuals	Comments/Issues	Government's Response
		to fully comply with all the requirements under the Bill.
<p>The Hong Kong Conveyancing and Property Law Association Limited</p> <p>The Law Society of Hong Kong</p> <p>The Real Estate Developers Association of Hong Kong</p>	<ul style="list-style-type: none"> • Apart from New Territories Exempted House (NTEH), exemption should be granted to other types of house development in Hong Kong. 	<ul style="list-style-type: none"> • We propose in the Bill to exempt the sale of <u>one single house</u> which has been issued with a certificate of exemption under the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121). If the development involves the sale of more than one NTEH, no exemption will be granted. • We are concerned that extending the exemption to cover non-NTEH single houses may lead to possible abuse.
<p>The Law Society of Hong Kong</p>	<ul style="list-style-type: none"> • Clause 58 should be amended to provide exemption for sale of unsold property (with stipulated percentage) that has been completed for a certain period (e.g. 5 years). 	<ul style="list-style-type: none"> • Unsold residential properties that have been completed for a certain period are no different from first-hand residential properties from the perspective of consumer protection. • In most of the cases of the sale of first-hand residential properties, regardless of whether the properties are uncompleted or completed, the vendors (i.e. developers) and individual purchasers

(C) Exemption Arrangements under the Bill		
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		<p>are not on an equal footing. The former is always in a much stronger position vis-à-vis the latter. Not only do vendors hold first-hand residential properties in bulk, they also possess and control the release of information relating to those properties and their sales arrangements. We consider the proposed legislation should also apply to first-hand completed residential properties, regardless of the time gap between the date of completion and date of commencement of sale of a development.</p>
The Law Society of Hong Kong	<ul style="list-style-type: none"> The proposed statutory regime is too rigid and there should be a mechanism to grant exemptions from the requirements on a case-by-case basis. 	<ul style="list-style-type: none"> The objective of the proposed legislation is to enhance market transparency and consumer protection. It is very important that the law should be clear and without ambiguity, and that any exemptions to be considered have to be fair and measurable in an objective manner, and the types of exemptions should be clearly set out in the Bill. Exemptions on a case by case basis in the light of individual circumstances will not be practicable for implementation, and will undermine the effectiveness of the legislation.

(D) The Use of Gross Floor Area and Saleable Area

Organizations/Individuals	Comments/Issues	Government's Response
The Hong Kong Institute of Surveyors	<ul style="list-style-type: none">• Support the use of Saleable Area (SA) as the only basis to quote property area and price of residential properties. In the absence of a standardized definition of Gross Floor Area (GFA) per property, its use will cause confusion to the public.	<ul style="list-style-type: none">• Noted.
The Real Estate Developers Association of Hong Kong	<ul style="list-style-type: none">• The prohibition on providing information relating to the price per square foot/metre in any format other than SA will constitute a significant interference with developers' freedom to provide, and purchasers' freedom to receive, GFA information in breach of the right to freedom of expression under Article 16 of the Hong Kong Bill of Rights.• It is the long-established market practice to use GFA to quote the property size and property price of residential properties in sales brochures, prices lists and other promotional materials.	<ul style="list-style-type: none">• To most if not all prospective purchasers, "flat size" and "flat price per square foot/metre" are two crucial factors taken into account when making a flat purchase decision. In recent years, the public have been demanding better information on this front. It is therefore very important that such information is provided to prospective buyers in a clear, accurate and consistent manner. The information so provided should also facilitate potential buyers to <u>compare flat prices of different developments calculated on the same area basis</u>.• Various professional bodies, political parties and estate agency associations indicated support for adopting SA as the only basis for quoting the flat size and the flat price per square foot/metre of

(D) The Use of Gross Floor Area and Saleable Area

Organizations/Individuals	Comments/Issues	Government's Response
	<ul style="list-style-type: none">• Provision of information on GFA would enhance transparency, and ensure prospective purchasers' right to receive information.• Suggests a standardised definition of GFA: only the GFA of the common areas which serve exclusively the residential part will be included and apportioned to the flats. The apportionment will follow the corresponding undivided shares actually allocated to a particular unit.	<p>first-hand residential flats in the sales brochures, price lists and advertisements. They considered that SA with a standard definition would provide an objective and useful benchmark for making comparison between different developments.</p> <ul style="list-style-type: none">• There is at present a standardized definition of SA for a property, but not a commonly-adopted definition of GFA for a property. Without a standardized definition of GFA for a property, it is at present not possible to prescribe GFA for a property in precise term in the proposed legislation.
Designing Hong Kong Limited	<ul style="list-style-type: none">• There is a need to work out a standardized definition on GFA.	<ul style="list-style-type: none">• The challenge of coming up with a standardized definition of GFA for a property is to get all the key stakeholders to come to agree with a definition. Our experience in working out a standardized definition of SA indicates that it will take a considerable time for all relevant stakeholders (including the Hong Kong Institute of Surveyors (HKIS), the Hong Kong Institute of Architects (HKIA), the Law Society of Hong Kong, the Real Estate Developers Association of Hong Kong (REDA) and the Consumer Council) to agree on

(D) The Use of Gross Floor Area and Saleable Area

Organizations/Individuals	Comments/Issues	Government's Response
		<p>such a definition. HKIS and HKIA have indicated that it will take considerable time to work out a standard definition of GFA for a property, as it is not just a matter of what items are to be included in the calculation of GFA per property, but also how each item is to be measured.</p> <ul style="list-style-type: none"><li data-bbox="1279 608 2065 1222">• <u>Allowing the use of GFA per property, which currently does not have a standardized definition, for quoting flat size and flat price per square foot/metre will cause confusion rather than enhance the comprehensiveness of information to flat purchasers.</u> As different vendors may include different items in the constituents of “apportioned share of common areas” in calculating the GFA of a property, it is currently not possible for a purchaser to carry out an apple-to-apple comparison of the size, price and “efficiency ratio” of residential properties bearing the same GFA in different residential property developments.<li data-bbox="1279 1283 2065 1415">• We wish to point out that the Bill does not prohibit the disclosure of area information other than the SA in the sales of first-hand residential properties.

(D) The Use of Gross Floor Area and Saleable Area

Organizations/Individuals	Comments/Issues	Government's Response
		<p>Nor will the public or prospective buyers be deprived of sufficient information about the area of the property and the common area of the development. Rather, the Bill requires vendors to present floor area information to the public in a clearer though different manner. While flat size and flat price per square foot/metre will not be allowed to be quoted on the basis of GFA under the Bill, vendors will be required to provide area information on common facilities (e.g. resident's clubhouse) on an aggregate basis in the sales brochures. Also, vendors will be required under the Bill to provide in the sales brochure and price list the area of those features which the owners of a residential property will have exclusive use, namely an air-conditioning plant room, a bay window, a cockloft, a flat roof, a garden, a parking space, a roof, a stairhood, a terrace and a yard. This will enable flat purchasers to know exactly (i) the SA of a residential property, (ii) the area of those features which the owners of a residential property will have exclusive use; and (iii) holistically the types and area of common facilities in the development.</p>

(D) The Use of Gross Floor Area and Saleable Area

Organizations/Individuals	Comments/Issues	Government's Response
		<ul style="list-style-type: none"><li data-bbox="1279 261 2067 783">• The right to freedom of expression is not absolute. It may be restricted if the restriction is proportionate to a legitimate aim. Where commercial speech is involved, less justification is required for restrictions than would otherwise be the case where more serious aspects of freedom of expression are at stake. The Court recognises that the legislature has a certain margin of appreciation in assessing the existence and extent of the necessity of an interference, particularly in commercial matters involving social or economic policies.<li data-bbox="1279 847 2067 1070">• There does not seem to be sufficient basis for saying that the proposed measures constitute a significant interference with the right to freedom of expression in breach of Article 16 of the Bill of Rights.<li data-bbox="1279 1134 2067 1415">• The Estate Agents Authority (EAA) will issue a practice circular to require the adoption of SA in the sale and purchase and leasing of second-hand residential properties. We consider that the change to the use of SA only in the first-hand residential properties will also bring about changes

(D) The Use of Gross Floor Area and Saleable Area

Organizations/Individuals	Comments/Issues	Government's Response
		<p>along this direction in the second-hand residential market. The effect will be that, while there is yet to be mandatory requirements which prohibit the use of GFA per flat in the second-hand market, there will be a mindset change and evolution from quoting GFA to quoting saleable area as the mainstream in the sale of second-hand flats.</p> <ul style="list-style-type: none">• Calculation of management fees is premised on the number of undivided shares assigned to each residential property, NOT on “common areas apportioned to individual units”. Clause 14 of Schedule 1 to the Bill requires vendors to provide information on the number of undivided shares assigned to each residential property in the development, and the basis on which the management expenses are shared among the owners of the residential properties in the development.
Civic Party Hong Kong Professionals and Senior Executives Association	<ul style="list-style-type: none">• The “use of SA only to quote flat price/flat size” should be extended to the second-hand market.	<ul style="list-style-type: none">• It is a common misperception that residential properties in the second-hand market do not have readily available measurements in terms of SA for a property. The fact is that, with effect from 10 October 2008, the Lands Department Consent

(D) The Use of Gross Floor Area and Saleable Area

Organizations/Individuals	Comments/Issues	Government's Response
		<p>Scheme (Consent Scheme) requires that all residential properties which obtain pre-sale consent on or after that date have to provide information on property size and price per property on the basis of SA. When these residential properties are sold in the second-hand market, they have property size and price per square foot/metre in SA. Beyond this, information on SA of all assessed second-hand residential properties in Hong Kong (except village houses) is readily available from the Rating and Valuation Department (RVD). Also, it is a statutory requirement under the Estate Agents Practice (General Duties and Hong Kong Residential Properties) Regulation (Cap. 511C) that estate agents should, where applicable, provide information on SA of a flat, including second-hand residential properties, to flat purchasers.</p> <ul style="list-style-type: none">• EAA will issue a practice circular to stipulate the adoption of SA in the sale and purchase, and the leasing of second-hand residential properties. We consider that the change to the use of only SA in the first-hand residential properties will also bring about changes along this direction in the second-hand

(D) The Use of Gross Floor Area and Saleable Area

Organizations/Individuals	Comments/Issues	Government's Response
		<p>residential market.</p> <ul style="list-style-type: none">• Taking into account the community has a general consensus that the sale of first-hand residential properties should be regulated by law, we consider there is an imminent need to introduce a statutory regime to regulate the sale of first-hand residential properties where there is an imbalance of power between the vendors and buyers. The Administration may consider how best to further enhance the transparency of information in the sale of second-hand residential properties when there is a consensus in the community that such sales should also be further regulated.
<p>Hong Kong Institute of Real Estate Administrators</p> <p>Property Agencies Association Limited</p> <p>Professional Property Services Limited</p>	<ul style="list-style-type: none">• There should be a transitional period where property price and price size could be quoted in GFA and SA in parallel.	<ul style="list-style-type: none">• The proposed legislation will only come into effect in around 12 months' time after the enactment of the law when the enforcement authority will come into operation. There will therefore be a reasonably long period of time for the market to gear up to using only SA to present property size and property price per square foot/metre for first-hand residential properties.

(D) The Use of Gross Floor Area and Saleable Area		
Organizations/Individuals	Comments/Issues	Government's Response
Centaline Property Agency Limited Hong Kong Real Estate Agencies General Association Property Agencies Association Limited	<ul style="list-style-type: none"> To enable the public to familiarize with the use of SA, consideration should be given for the RVD to set out SA in the demand note for Government rates/rent. 	<ul style="list-style-type: none"> We have relayed the suggestion that “information on SA should be provided in the demand note for Government rates/rent” to RVD. RVD is considering the suggestion.
Centaline Property Agency Limited Hong Kong Real Estate Agencies General Association	<ul style="list-style-type: none"> Should enhance public education on the use of SA. 	<ul style="list-style-type: none"> We will step up public education after the enactment of the Bill and the coming into operation of the Bill to bring about the mindset change on the use of only SA for presenting property area and price per square foot/metre of a residential property.
The Law Society of Hong Kong	<ul style="list-style-type: none"> Definition of SA in the Bill is different from Consent Scheme, and in particular, “stairhood” is excluded from the definition of SA in the Bill (but not excluded from the definition of SA under the Consent Scheme). Precise definition should be given to each item covered by the definition of “SA”. 	<ul style="list-style-type: none"> The definition of SA in the Bill is materially the same as the one used under the Consent Scheme. We have used different wording to present the definition in the Bill for drafting purpose. HKIS has issued a guideline earlier on to clarify that “stairhood” should be excluded from the calculation of SA.

(D) The Use of Gross Floor Area and Saleable Area

Organizations/Individuals	Comments/Issues	Government's Response
	<ul style="list-style-type: none">• What happens when certain items are combined (e.g. balcony combined with flat roof).	<ul style="list-style-type: none">• We consider it not necessary to define every term covered by the definition of “SA” in the Bill. Terms like balcony and garden should refer to their dictionary meaning. Also, as far as we understand, the relevant professionals (such as architects and surveyors) do not have problem in understanding the terms all along. The enforcement authority will consider issuing guidelines to elaborate on the parameters of various components of saleable area.• If a balcony adjoins a flat roof, the extent of the balcony should be clearly demarcated on the building plan.

(E) Requirements on Sales Brochure

Organizations/Individuals	Comments/Issues	Government's Response
The Real Estate Developers Association of Hong Kong	<ul style="list-style-type: none">• Vendor is required to provide a layout plan in the sales brochure. It is uncertain whether the term “layout plan” refers to the master layout plan required to be submitted to the Town Planning Board.	<ul style="list-style-type: none">• Clause 9 in Schedule 1 to the Bill sets out the detailed requirements on the provision of layout plan in the sales brochure, which are largely the same as the requirements under the Consent Scheme. The clause makes no reference to the “master layout plan” under the Town Planning Ordinance.
	<ul style="list-style-type: none">• Does not support providing an aerial photo in a sales brochure showing the development and its vicinity on the grounds that it is an onerous requirement for small developments.• Aerial photo of a particular area at which the development is situated may not be available at the Survey and Mapping Office.	<ul style="list-style-type: none">• The provision of an aerial photo of the development in a sales brochure will enhance transparency and assist purchasers to obtain a better understanding of the development’s surrounding areas.• To ensure consistency among developers, and taking into account that developers may conveniently obtain an aerial photo from the Lands Department at a reasonable cost, we consider it necessary to specify that the aerial photo should be obtained from the Lands Department.• The Survey and Mapping Office under the Lands Department takes aerial photo which cover the whole territory of Hong Kong. The aerial photos

(E) Requirements on Sales Brochure		
Organizations/Individuals	Comments/Issues	Government's Response
		are normally updated annually. Any person who wishes to reproduce an aerial photo of the Survey and Mapping Office is permitted to do so by paying a copyright charge to the Survey and Mapping Office (e.g. about \$2 600 for reproducing 10 000 copies of an aerial photo.)
The Law Society of Hong Kong The Real Estate Developers Association of Hong Kong	<ul style="list-style-type: none"> Street number may not yet been allocated when the sales brochures are sent for print. 	<ul style="list-style-type: none"> Upon the issue of the consents to commence building works, vendors may apply in writing to RVD for allocation of building numbers. RVD will normally allocate the building number within one month from application. Vendors should act in good time to submit applications to RVD. It is quite rare in the past that street number was not yet available before the printing of sales brochure.
	<ul style="list-style-type: none"> Vendor is required to provide information on onerous lease condition. The word “onerous” is subjective. 	<ul style="list-style-type: none"> The clause on “onerous lease conditions” is an existing clause in the Consent Scheme. Examples include landscaped areas outside the lot which are to be maintained at the expense of the owners; noise mitigation measures (such as noise barriers) which are to be maintained at the expense of the owners. We will consider giving examples on “onerous lease

(E) Requirements on Sales Brochure		
Organizations/Individuals	Comments/Issues	Government's Response
		conditions” in the guidelines to be issued by the enforcement authority.
Ms Amy Yung, Member of the Islands District Council	<ul style="list-style-type: none"> Exemptions are provided in the Bill such that the vendors are only required to provide information specific to the phase but not the development as a whole. In particular, clause 18(p)(i) of the Bill should be reviewed. 	<ul style="list-style-type: none"> We are not providing exemptions to phased development. Clause 18(2)(p) of the Bill as currently drafted will not give rise to a situation that a sales brochure for a particular phase will not disclose responsibilities and obligations that fall on owners in all phases. Clause 18 of the Bill stipulates the information required to be set out in a sales brochure. Taking into account that some developments are developed by phase, we have set out under clause 24(1) that if the development is divided into 2 or more phases, the reference to “development” is a reference to a “phase” in certain clauses (including clause 18) in the Bill. Since some of the required information under clause 18 is only available on the basis of the whole development, but not for a particular phase, we have stipulated in clause 24(2) that clause 24(1) does not apply to clause 18(2)(f), (h) and (i), i.e. the location plan of the development, outline zoning

(E) Requirements on Sales Brochure		
Organizations/Individuals	Comments/Issues	Government's Response
		<p>plan, etc. relating to the development and the layout plan of the development. The detailed requirements on the sales brochures are set out in Schedule 1. Section 32 of Schedule 1 provides a similar effect as clause 24 in the Bill.</p> <ul style="list-style-type: none"> • Under the current drafting of clause 18(2)(p), information on facilities <u>required under the land grant</u> to be constructed and provided for the Government or for public use (clause 18(2)(p)(i)), and any facilities or open space that is <u>required under the land grant</u> to be managed, operated or maintained for public use at the expense of the owners of the residential properties in the development (clause 18(2)(p)(ii)), are not phase-specific. As long as the information is available in the land grant, such information should be provided in the sales brochure. • The effect of clause 18(2)(p)(ii) and section 16 of Schedule 1 (in particular section 16(5) of Schedule 1) is that if there are facilities or open spaces that are required to be managed, operated or maintained at the expense of the owners of the residential

(E) Requirements on Sales Brochure		
Organizations/Individuals	Comments/Issues	Government's Response
		properties in the development and that those owners are required to meet a proportion of the expense of managing, operating or maintaining the facilities or open spaces through the management expenses apportioned to the residential properties concerned, then the sales brochure must state so.
Hong Kong Professionals and Senior Executives Association	<ul style="list-style-type: none"> The sequence of information to be provided in sales brochure should be stipulated. 	<ul style="list-style-type: none"> Clause 18(4) of the Bill stipulates that a sales brochure must set out the information specified in clause 18(2) of the Bill in sequence.
The Law Society of Hong Kong	<ul style="list-style-type: none"> Clause 18(2) has omitted the requirement of the "Form" (i.e. Notes to Purchasers) 	<ul style="list-style-type: none"> We have made clear in clause 18(1) in the Bill that "the sales brochure for the development must first set out the steps that a person is advised to take for the person's protection before deciding to purchase a residential property in the development". The enforcement authority will issue guidelines providing guidance on the operation of this clause.
	<ul style="list-style-type: none"> Clause 18(5) is unclear as to what is not applicable to the development. 	<ul style="list-style-type: none"> "Not applicable to the development" means the required information is irrelevant to the development and the vendors do not have to provide such information. That said, the sales brochure should still include a paragraph with an appropriate

(E) Requirements on Sales Brochure		
Organizations/Individuals	Comments/Issues	Government's Response
		<p>heading for that information, and state in that paragraph that the information is not applicable to the development. For example, according to clause 26 of Schedule 1 to the Bill, vendor is required to provide information on “maintenance of slopes”. If a development does not have a slope to maintain, this is “not applicable” to the development.</p>
The Law Society of Hong Kong	<ul style="list-style-type: none"> Should allow vendors to provide information that is specific to a development in sales brochure. 	We are considering the practicality of doing so.
The Law Society of Hong Kong	<ul style="list-style-type: none"> Requiring the vendor to set out in the sales brochure provisions on the land grant, the deed of mutual covenant and the deed of dedication that concern the public facilities and public open space would mean the reproduction of the whole document. 	<ul style="list-style-type: none"> It is an existing requirement under the Consent Scheme that vendors should set out in the sales brochure provisions on the land grant, the deed of mutual covenant and the deed of dedication that concern the public facilities and public open space. Vendors have been complying with this requirement without problems all along. We have randomly checked a few existing sales brochures and consider that the length of the part on public facilities and public open space is not unduly

(E) Requirements on Sales Brochure		
Organizations/Individuals	Comments/Issues	Government's Response
		long.
The Law Society of Hong Kong	<ul style="list-style-type: none"> • What is the information required to be set out on “any agreement with a utility company”? 	<ul style="list-style-type: none"> • This is an existing requirement under the Consent Scheme and the REDA’s guidelines. Vendors will have to set out in the sales brochure whether it has signed any agreement with a utility company for the provision of utility services (e.g. telecommunications service providers, fuel suppliers) to the owners. Vendors should also set out in the sales brochure whether such agreement is a restrictive one, e.g. whether any service agreement has been signed such that the owner must only use the service provided by that particular services provider.
The Law Society of Hong Kong	<ul style="list-style-type: none"> • Information on maintenance of footbridge, turnout, public road, etc should be provided in the sales brochure. 	<ul style="list-style-type: none"> • Clause 16(2) of Schedule 1 to the Bill stipulates that the sales brochure must contain a description of any facilities that are required under the land grant to be managed, operated or maintained for public use at the expense of the owners of the residential properties in the development. Under normal circumstances, the maintenance of footbridge, turnout and public road should be covered by the aforesaid provision.

(F) Requirements on Price List		
Organizations/Individuals	Comments/Issues	Government's Response
The Real Estate Developers Association of Hong Kong	<ul style="list-style-type: none"> The requirement that vendors of first-hand residential properties must publish price lists covering a minimum number of properties (the requirement) may constitute an unjustifiable restriction on the vendor's right to dispose of its property in breach of Article 105 of the Basic Law on either of the following grounds: (a) the requirement has the effect of forcing the vendors to sell all those properties included in the price lists ("ground (a)"); or (b) alternatively, if the requirement does not have such an effect, it is difficult to see how the requirement can achieve its stated aim when the vendors need not sell those properties included in the price lists and may revise the price lists prior to sale ("ground (b)"). 	<ul style="list-style-type: none"> Requiring vendors to sell all residential properties on the price lists is a very draconian approach and will impose an excessive burden and restrictions on the vendors that they must offer to sell their properties at specified quantities prescribed by the Government. In relation to ground (a), the Bill does not require the vendors to offer for sale all those properties included in the price lists. What we are proposing in the Bill is to set the minimum number of residential properties to be disclosed in each price list while not requiring that vendors must offer to sell all the residential properties in the price list. As regards ground (b), the requirement seeks to address the undesirable market practice of "sale-by-small-batches".
Consumer Council	<ul style="list-style-type: none"> The Bill requires vendors to disclose a minimum number of prices of units on each price list but they are not obliged to sell all the units in the price list. This could not 	<ul style="list-style-type: none"> This "sale-by-small-batches" practice has caused grave public concern since prospective purchasers can only make their decisions with very limited knowledge about the overall flat prices in the

(F) Requirements on Price List		
Organizations/Individuals	Comments/Issues	Government's Response
	<p>effectively address the “sell by batches” problem and may create confusion as vendors may not be selling some of the units on the price lists.</p> <ul style="list-style-type: none"> • Suggest requiring the vendors to disclose a minimum number of prices of the units on each price list <u>AND</u> to offer all units on the price lists for sale. 	<p>development.</p> <ul style="list-style-type: none"> • There are calls from Legislative Council Members, stakeholders (e.g. the Consumer Council and estate agents) and the public that the undesirable “sale-by-small-batches” market practice must be tackled in order to enhance the transparency of flat prices. • Although the Bill does not require vendors to sell all the properties covered in a price list, each price list will include a considerable number of properties in a development. Once a price list is issued, the properties covered in that price list must be sold at the prices as set out in that price list. If the vendor wishes to change the prices, a revised price list will need to be issued and the residential properties concerned may only be sold three days after the issuance of the revised price list. As such, the vendors will not set prices arbitrarily on a price list even for those properties which are not offered for sale immediately. On this basis, the requirement will enable purchasers to get a fuller picture of the prices of a considerable number of properties in a
Civic Party	<ul style="list-style-type: none"> • The requirement on price list may not be able to tackle the problem created by the “sell-by-small-batches” market practice. 	

(F) Requirements on Price List		
Organizations/Individuals	Comments/Issues	Government's Response
		<p>development.</p> <ul style="list-style-type: none"> • The Bill also requires vendors to make public certain key information on sales arrangements including the number of properties to be offered for sale at any particular time and what they are. This enables the public to know without ambiguity how many and which of those properties shown on a price list are offered for sale. • In sum, there does not seem to be sufficient basis for saying that the requirement constitutes an unjustifiable restriction on the vendor's right to dispose of its property in breach of Article 105 of the Basic Law.
The Real Estate Developers Association of Hong Kong	<ul style="list-style-type: none"> • The requirement that a price list must be issued three days prior to the sale is unreasonable and impracticable. • If the vendor has no genuine intention to sell all the residential properties, inclusion of those residential properties in the price list effectively forces owners to make false 	<ul style="list-style-type: none"> • To enable potential purchasers to obtain comprehensive information before making purchase decisions, it is crucial that vendors issue each and every price list well before the sale commences. The "three-day" requirement on price lists is an existing requirement under the Consent Scheme and the REDA's guidelines and has been working well.

(F) Requirements on Price List

Organizations/Individuals	Comments/Issues	Government's Response
	<p>or misleading statement.</p> <ul style="list-style-type: none">• May adversely affect the tax position of the owner as all the residential properties as set out in the price list may be treated by the tax authority a properties for sale.• Residential properties with special characteristics (e.g. house development and large-size apartments) should be exempted from the requirements on price list (where a price list must contain at least a certain number of units of the development).	<ul style="list-style-type: none">• By allowing adjustments to the prices through issuing revised price lists and requiring the residential properties concerned not to be sold earlier than three days after the issue of the revised price lists, the proposed requirements strike a balance between enhancing consumer protection and allowing vendors to take business decisions in the light of changing market conditions.• To ensure price transparency, once the price list is issued, adjustments to the prices (regardless of whether prices are to be adjusted upwards or downwards), should only be made through issuing a revised price list, and the residential property concerned cannot be sold unless the revised price list has been made public at least three days ahead. Allowing vendors to adjust the prices downwards without the need to comply with the “3-day requirement may open a loophole for vendors to mark up prices in the price lists and then lower the prices after the signing of the Agreement for Sale and Purchase (ASP). On balance, we consider the “3-day requirement” should apply to all kinds of changes in prices.

(F) Requirements on Price List

Organizations/Individuals	Comments/Issues	Government's Response
		<ul style="list-style-type: none"><li data-bbox="1288 320 2067 1023">• The Inland Revenue Department (IRD) will look into the facts of each particular case in its tax assessment process. In the case of whether there is an intention to sell residential properties, the mere disclosure of the price of a residential property by a developer for the purpose of fulfilling a law requirement is not a conclusive factor in determining whether or not the developer is having an intention to sell that particular residential property. IRD will take into account all relevant factors, such as whether the vendor has announced that such a residential property will be offered for sale. The considerations by IRD in its tax assessments will remain unchanged after the enactment of the Bill.<li data-bbox="1288 1091 2067 1315">• We consider that purchasers of first-hand large size residential properties or those with special characteristics deserve the same level of protection as purchasers of other types of first-hand residential properties.

(F) Requirements on Price List		
Organizations/Individuals	Comments/Issues	Government's Response
The Law Society of Hong Kong	<ul style="list-style-type: none"> • Price variation should be allowed after signing of the ASP. 	<ul style="list-style-type: none"> • If price variation is allowed after the signing of ASP, it may create loophole for vendors to mark up the prices in the price list but sell the properties at reduced prices after the signing of the ASP. • Clause 28(5) of the Bill requires that a price list must set out the terms of payment, the basis on which any discount on the price is available, and any gift, or any financial advantage or benefit, to be made available in connection with the purchase of a specified residential property in the development. The vendor and the purchaser may adopt other payment terms after the signing of the ASP as long as the new payment terms have been provided for in the price list.

(G) Requirements on Disclosure of Transaction Information		
Organizations/Individuals	Comments/Issues	Government's Response
The Real Estate Developers Association of Hong Kong	<ul style="list-style-type: none"> The time limit for disclosure of transaction information should be extended. 	<ul style="list-style-type: none"> The proposed requirements on the disclosure of transaction information are enhancements to the existing measures in the Consent Scheme and the REDA's guidelines. They strike a balance between ensuring timely dissemination of updated and the provision of accurate transaction information in a user-friendly manner, and the practical need to give vendors reasonable lead time to make ready the transaction information accurately.
Consumer Council	<ul style="list-style-type: none"> Transaction information should be disclosed in a real-time manner (i.e. disclose transaction information within 24 hours upon the signing of the Preliminary Agreement for Sale and Purchase (PASP) is not fast enough). 	
The Law Society of Hong Kong	<ul style="list-style-type: none"> Extend disclosure to joint venture developers and holding companies 	<ul style="list-style-type: none"> Because of the wider definition of "vendor" in clause 7 of the Bill, a sales brochure has to mention, as required under clause 18(2)(b) of the Bill, a joint venture developer that falls within that wider definition. If a purchaser is a "related party" of such a joint venture developer, that must also be disclosed under clause 52(1)(g) & (2)(e).

(H) Requirements on Sales Arrangements		
Organizations/Individuals	Comments/Issues	Government's Response
<p>Consumer Council</p> <p>Hong Kong Chamber of Professional Property Consultants Limited</p>	<ul style="list-style-type: none"> • “Reservation” should not be allowed before the formal commencement of sale. 	<ul style="list-style-type: none"> • We propose in the Bill that only “general expression of intent” is allowed after the issuance of price list. “Specific expression of intent” (i.e. reservation of a particular unit) will not be allowed even after the issuance of price list and before the commencement of sale. We consider this approach has struck a balance between preventing a sale in disguise and allowing developers to test and respond flexibly to the market.
<p>Centaline Property Agency Limited</p>	<ul style="list-style-type: none"> • EAA should issue guidelines to help estate agents to comply with the requirement relating to “reservation of unit”. 	<ul style="list-style-type: none"> • EAA issues guidelines as and when necessary to help estate agents comply with new requirements and cope with changing public expectation. We will work closely with EAA on this.
<p>The Hong Kong Conveyancing and Property Law Association Limited</p>	<ul style="list-style-type: none"> • The Bill should include provisions for arrangements concerning the acceptance of general expression of intent. 	<ul style="list-style-type: none"> • The enforcement authority may consider issuing guidelines as appropriate.

(I) Requirements on Conveyancing Arrangements and Related Matters		
Organizations/Individuals	Comments/Issues	Government's Response
Consumer Council	<ul style="list-style-type: none"> According to the Bill, if a purchaser decides not to proceed to the signing of the ASP after the signing of the PASP, he/she can do so with the forfeiture of 5% of the purchaser price. It is considered that a "5%" forfeiture is too much. A lower percentage should be considered. 	<ul style="list-style-type: none"> The proposal on the forfeiture arrangements have taken into account the particular characteristics of the residential property market in Hong Kong, including volatility of the market and the exuberance of speculative activities. Also, they take into account the need to deter abuse by speculators or hasty purchase decision by prospective buyers. We consider the proposal of setting the forfeiture amount at 5% of the purchase price (as against 10 % of the purchase price at present) to be appropriate. In view of the practical difficulties envisaged by the Law Society of Hong Kong and the Hong Kong Conveyancing and Property Law Association Limited for conveyancing solicitors to complete advising their clients on and arranging them to sign the ASP within three working days counting from the date of the client's signing of the PASP, we will
The Real Estate Developers Association of Hong Kong	<ul style="list-style-type: none"> The Administration should provide reasons and justifications to support its proposal to reduce the amount of preliminary deposit from the current 10% to the proposed 5% of the purchase price. 	
The Hong Kong Conveyancing and Property Law Association Limited	<ul style="list-style-type: none"> The preliminary deposit should be fixed at 1% of the purchase price. 	
The Law Society of Hong Kong	<ul style="list-style-type: none"> There should be provisions in the Bill to deal with special cases to allow execution of ASP beyond 3 days. 	
The Hong Kong Conveyancing and Property Law Association Limited	<ul style="list-style-type: none"> It is too rush to require that the ASP must be signed within 3 working days after the signing of the PASP. Suggest to extend it 	

(I) Requirements on Conveyancing Arrangements and Related Matters

Organizations/Individuals	Comments/Issues	Government’s Response
	<p>to five working days.</p>	<p>consider extending the “three day “ requirement.</p> <ul style="list-style-type: none"> • It is very important that the law should be clear and without ambiguity, and that any exemptions to be considered have to be fair and measurable in an objective manner, and the types of exemptions should be clearly set out in the Bill. • Exemptions on a case by case basis in the light of individual circumstances will not be practicable for implementation, and will undermine the effectiveness of the legislation.
<p>The Law Society of Hong Kong</p>	<ul style="list-style-type: none"> • The mandatory provisions in THE PASP/ASP should not apply to completed development with Certificate of Complainece (CC) or Consent to Assign (CA) issued if the vendor and the purchaser have separate legal representation. 	<ul style="list-style-type: none"> • We understand that at present, the Law Society of Hong Kong has stipulated certain mandatory provisions for inclusion into the ASP for non-Consent Scheme projects. Such mandatory provisions must be included in the ASP only when the vendor and buyer are represented by the same solicitor. • With a view to enhancing consumer protection, we consider all buyers should be protected by the same set of mandatory provisions in the PASP and the

(I) Requirements on Conveyancing Arrangements and Related Matters		
Organizations/Individuals	Comments/Issues	Government's Response
		ASP under the proposed legislation, regardless of whether they have separate legal representation or not.
The Law Society of Hong Kong	<ul style="list-style-type: none"> Mandatory provisions on stakeholding of money should not apply to the ASP for completed development. 	<ul style="list-style-type: none"> For completed development pending compliance (i.e. residential development which has obtained the Occupation Permit (OP), but has not yet obtained the CC or CA), since there are still outstanding works for the development to be completed (e.g. outdoor facilities, roads and greening), the mandatory provisions on stakeholding of money are necessary to ensure that there is sufficient funding for those outstanding works. We will review the stakeholding provisions for completed development not pending compliance (i.e. residential development which has obtained the OP and the CC or CA).
The Hong Kong Conveyancing and Property Law Association Limited	<ul style="list-style-type: none"> Suggest that the relevant mandatory provisions in Schedules 4 to 7 be impliedly incorporated into the legislation. 	<ul style="list-style-type: none"> We have considered using the “impliedly incorporated” approach. However, in some provisions in Schedules 4 to 7, there are blanks to be filled in. If a provision is impliedly incorporated as such, it is an incomplete provision in the relevant

(I) Requirements on Conveyancing Arrangements and Related Matters

Organizations/Individuals	Comments/Issues	Government's Response
		agreement.
The Law Society of Hong Kong The Hong Kong Conveyancing and Property Law Association Limited	<ul style="list-style-type: none">• The provision that “the vendor shall not restrict the purchaser’s right to raise requisition or objection in respect of titles” is not practicable.	<ul style="list-style-type: none">• According to the Law Society of Hong Kong and the Hong Kong Conveyancing and Property Law Association Limited, in the majority of cases, a vendor is under a duty to, and can as a matter of law, prove and give good title. However, there may be exceptional cases, e.g. where there is missing land grant, missing power of attorney, defective company’s execution, missing title documents, possible adverse possession claim by a trespasser, or the developer-vendor is selling an interest in a property under construction which is far less than the whole of the residue of the term of years under which the property is held under the relevant land grant. In these cases, if the purchaser agrees to purchase the property notwithstanding the title issues, the vendor and purchaser will be separately legally represented and the PASP and ASP will be specially drafted to include special provisions dealing with the title issues. This is a well accepted practice. The Law Society of Hong Kong and the Hong Kong Conveyancing and Property Law Association Limited consider it is not

(I) Requirements on Conveyancing Arrangements and Related Matters

Organizations/Individuals	Comments/Issues	Government's Response
		<p>appropriate to require that the PASP and the ASP of such transactions must include the provision that “the vendor shall not restrict the purchaser’s right to raise requisition or objection in respect of titles”.</p> <ul style="list-style-type: none">• We have given careful consideration to the situations mentioned by the Law Society of Hong Kong and the Hong Kong Conveyancing and Property Law Association Limited. We consider that if we do not require for such a mandatory provision in the PASP and the ASP, vendors may put in provisions to prohibit purchasers’ right to raise requisition in sale and purchase agreements. We consider this not acceptable from and not in line with the perspective of protecting consumer interest.
The Hong Kong Conveyancing and Property Law Association Limited	<ul style="list-style-type: none">• The Government should rectify the situation of loss of Crown Lease or Grant in New Territories as soon as possible.• The Land Titles Ordinance which has been passed by the LegCo in 2004 should be put into operation as soon as possible.	<ul style="list-style-type: none">• We have relayed the suggestions to the relevant Government Bureau / Departments for follow-up.

(I) Requirements on Conveyancing Arrangements and Related Matters

Organizations/Individuals	Comments/Issues	Government's Response
The Law Society of Hong Kong	<ul style="list-style-type: none">• The mandatory provisions for the PASP and the ASP should in any event express that they will not be affecting the statutory presumptions under sections 13 and 13A of the Conveyancing and Property Ordinance (Cap. 219) (i.e. the 15 year statutory title proving period) .	<ul style="list-style-type: none">• We will consider amending the Bill to avoid the possible conflict with sections 13 and 13A of Cap. 219.
The Law Society of Hong Kong	<ul style="list-style-type: none">• Suggestions on the use of terms in Schedule 5 (e.g. “the description “Blocks” in the definition of ‘Phase” is too restrictive)	<ul style="list-style-type: none">• We note the Law Society’s suggestions and will consider revising the Bill as appropriate.
The Law Society of Hong Kong	<ul style="list-style-type: none">• Schedule 5 should cater for case of compulsory sale under the Lands (Compulsory Sale Order for Redevelopment) Ordinance (Cap. 545)	<ul style="list-style-type: none">• We will review Schedule 5, taking into account Cap. 545.
The Law Society of Hong Kong	<ul style="list-style-type: none">• There are problems with the proposed mandatory clause 14 in Schedule 5 to the Bill when issuance of the Occupation Document does not necessarily mean that the Vendor is in a position validly to assign the property. The requirement that the vendor should give notice within one month	<ul style="list-style-type: none">• We note that vendors may have practical difficulty in notifying purchasers in writing that it is in a position validly to assign a residential property within one month after the issue of the Occupation Document. We will consider extending the time limit as appropriate.

(I) Requirements on Conveyancing Arrangements and Related Matters

Organizations/Individuals	Comments/Issues	Government's Response
	after the issuance of Occupation Document should be extended to seven months.	
The Law Society of Hong Kong	<ul style="list-style-type: none">• The mandatory clause in Schedule 5 has omitted the existing mechanism contained in the Consent and Non-Consent Scheme forms to enable disputes on the extent of variation in the Measurements and the extent of adjustment of the purchase price to be referred to an Authorized Person (AP).	<ul style="list-style-type: none">• The Bill does not preclude the inclusion of such a mechanism in the ASP. The vendor and purchasers may decide on their own on whether such a mechanism should be included.

(J) Offence of Misrepresentation and Dissemination of False or Misleading Information

Organizations/Individuals	Comments/Issues	Government's Response
The Real Estate Developers Association of Hong Kong	<ul style="list-style-type: none">• Reference to “material particular” will create uncertainty as to the actual scope and degree of gravity in determining whether a person commits an offence.	<ul style="list-style-type: none">• The reference to “material particular” is quite common in existing legislation. We do not consider such a reference will create uncertainty to the actual scope and degree of gravity in determining whether a person commits an offence.
The Law Society of Hong Kong	<ul style="list-style-type: none">• The offence of “advertisement containing information that is false or misleading in a material particular” should be more clearly defined.	<ul style="list-style-type: none">• “Misleading” simply means causing somebody to have a wrong idea or impression about something. The concept is clear.• In drafting the provisions concerning the prohibition of “false or misleading information”, we have made reference to existing Ordinances such as the Securities and Futures Ordinance (Cap. 571) (SFO) and the Estate Agents Ordinance (Cap. 511). Where the concept of “misleading” appears in these Ordinances in similar context, the word “misleading” is not defined.• Whether a piece of information is “misleading” should depend on the actual context. It will also be impossible to give an exhaustive list of what information will be constituted as “misleading”, and

(J) Offence of Misrepresentation and Dissemination of False or Misleading Information

Organizations/Individuals	Comments/Issues	Government's Response
		<p>trying to do so will only create loopholes.</p> <ul style="list-style-type: none">• According to the current drafting of the Bill, the prosecution will need to prove that the person knows that, or is reckless as to whether, the information is false or misleading in a material particular. On the above basis, we consider a general prohibition provision without specifying the meaning of “misleading” is appropriate.
The Law Society of Hong Kong	<ul style="list-style-type: none">• A more precise definition of what constitutes a fraudulent or reckless misrepresentation is needed.	<ul style="list-style-type: none">• In drafting the provision on misrepresentation, we have made reference to SFO. We consider the provision as now drafted is clear enough and there is no need to define further the meaning of “fraudulent” and “reckless”.
The Law Society of Hong Kong	<ul style="list-style-type: none">• The definition of “vendor” has not covered the right person(s).• The offence concerning “dissemination of false or misleading information” is too wide. APs and solicitors may be held criminally liable for its mere negligence or mistake and additional defence provisions	<ul style="list-style-type: none">• Criminal liabilities for non-compliance with the provisions under Part 2 (sales practices) and Part 3 (except clause 60) of the Bill are imposed on the “vendor”.• The definition of vendor under the Bill includes both the “owner” and the “person engaged by the owners to co-ordinate and supervise the process of

(J) Offence of Misrepresentation and Dissemination of False or Misleading Information

Organizations/Individuals	Comments/Issues	Government's Response
	would be required.	designing, planning, constructing, fitting out, completing <u>and</u> marketing the development” (e.g. the developer in a joint venture). This is to ensure that, where appropriate, both the owner of the residential property and the person so engaged can be held responsible for offences relating to sales practices. Only if a person is responsible for all aspects of the role of “the person so engaged” (i.e. co-ordinate and supervise the process of designing, planning, constructing, fitting out, completing <u>and</u> marketing the development) he/she would fall within the definition of “vendor”.
The Real Estate Developers Association of Hong Kong	<ul style="list-style-type: none">• The interpretation of “vendor” is too wide.• The scope is sufficiently wide to include developers and other persons or professionals involved in different stages of a development	<ul style="list-style-type: none">• According to the current drafting of clause 66 of the Bill, the prosecution will need to prove that the person knows that, or is reckless as to whether, the information is false or misleading as to a material fact.• According to the test of recklessness in <u>Sin Kam Wah & Another v. HKSAR</u> (FACC 14/2004), the prosecution had to prove that “the defendant’s state of mind was culpable in that he acted recklessly in respect of a circumstance if he was aware of a risk

(J) Offence of Misrepresentation and Dissemination of False or Misleading Information

Organizations/Individuals	Comments/Issues	Government's Response
		<p>which did or would exist, or in respect of a result if he was aware of a risk that it would occur, and it was, in the circumstances known to him, unreasonable to take the risk”, and “[c]onversely, a defendant could not be regarded as culpable so as to be convicted of the offence if, due to his age or personal characteristics, he genuinely did not appreciate or foresee the risks involved in his actions”.</p> <ul style="list-style-type: none">• As for the commission of an offence due to the mistake of a third party or accident or some other cause beyond a person's control, it is fact sensitive and no general exemption should be granted. The clause does not intend to catch professional for their negligence or mistake. We do not see the need to create additional defence provisions exclusively for professionals.
The Professional Commons	<ul style="list-style-type: none">• Suggest modeling on the Securities and Futures (Amendment) Bill 2011 to require the vendors to disclose any material information that would affect the price level of its residential developments.	<ul style="list-style-type: none">• We are of the view that the securities market and property market are not the same in every respect. The requirements imposed on the securities market may not be applicable to the property market.

(J) Offence of Misrepresentation and Dissemination of False or Misleading Information

Organizations/Individuals	Comments/Issues	Government's Response
		<ul style="list-style-type: none">• Under the Bill, vendors are already required to set out all essential information in the sales brochure. Also, it is an offence if the vendors knowingly or recklessly omit a material fact in the course of the sale of first-hand residential properties.• That said, we will give further thoughts on whether there is room for improvement under the Bill in this respect.

(K) Prosecution Time Limit		
Organizations/Individuals	Comments/Issues	Government's Response
The Real Estate Developers Association of Hong Kong	<ul style="list-style-type: none"> The prosecution time limit should model on the Trade Description Ordinance (TDO) (Cap. 362). 	<ul style="list-style-type: none"> If no prosecution time for summary offences is proposed in the Bill, section 26 of the Magistrates Ordinance (Cap. 227), which stipulates a time limit of six months from the time when the matter of a complaint or information arises, will apply to the summary offences in the Bill. There was a thorough discussion on the appropriate time limit for prosecuting offences summarily under the proposed legislation at the Steering Committee on Regulating the Sales of First-hand Residential by Legislation (the Steering Committee). The Steering Committee recommended that the time limit for prosecuting summary offences under the proposed legislation be set at three years from the commission of the offences. The Steering Committee has made reference to the prosecution time limit used under TDO. We consider the Steering Committee recommendation on the time limit for prosecuting summary offences under the proposed legislation reasonable. We have taken into account that pre-sale of uncompleted residential properties may
Hong Kong Professionals and Senior Executives Association	<ul style="list-style-type: none"> The prosecution time limit should be changed to “within one year after occupation”. 	
The Law Society of Hong Kong	<ul style="list-style-type: none"> Time limit should be shorter as memories fade. 	

(K) Prosecution Time Limit		
Organizations/Individuals	Comments/Issues	Government's Response
		take place many months before the Assignment and it is only possible for purchasers to lodge complaints on inaccuracy of information in sales brochures after the residential properties are handed over to them after Assignment.

(L) Penalty Proposals and Liability of Officers		
Organizations/Individuals	Comments/Issues	Government's Response
The Real Estate Developers Association of Hong Kong	<ul style="list-style-type: none"> • The penalty level should be lowered with reference to TDO. • It is not necessary to provide for separate provisions in the proposed legislation on “liability of corporate officers”. • The indictable offences under the Bill should be prosecuted summarily instead of on indictment. 	<ul style="list-style-type: none"> • The penalty proposals are made on the basis of the recommendations of the Steering Committee, which has made reference to various Ordinances including SFO and TDO. • The proposed penalty levels for offences under the Bill are determined by reference to various general principles : (i) the penalty for minor offences that are regulatory in nature (e.g. a failure to provide building plans for free public inspection, and failure to deposit sales brochures with specified authorities within the required timeframe) should be subject to a maximum fine at level 6 (i.e. \$100,000); (ii) for offences that may directly affect and potentially bring financial loss to prospective purchasers (e.g. failure to disclose transaction information), the proposed maximum penalties are a fine of \$500,000 to \$1,000,000; and (iii) regarding serious offences (e.g. misrepresentation and dissemination of false or misleading information), proposed maximum penalties range from a fine of \$500,000 to \$5,000,000 plus imprisonment up to a maximum of 6 months to
Property Agencies Association Limited	<ul style="list-style-type: none"> • Penalty for misrepresentation and dissemination of false or misleading information should commensurate with the severity of offence. 	
Hong Kong Professionals and Senior Executives Association	<ul style="list-style-type: none"> • Apart from fine and imprisonment, should consider imposing “stoppage of sale” as the penalty. 	

(L) Penalty Proposals and Liability of Officers

Organizations/Individuals	Comments/Issues	Government's Response
		<p>7 years.</p> <ul style="list-style-type: none">• We consider the penalty proposals in the Bill are pitched at the appropriate level to deter non-compliance.• There are similar provisions in other Ordinances which contain provision on “liability of corporate officers”. The clause on liability of officers in the Bill (i.e. clause 72) is modeled on SFO.
The Law Society of Hong Kong	<ul style="list-style-type: none">• The person should have the relevant mens rea / knowledge of the inaccuracy before imprisonment is imposed.	<ul style="list-style-type: none">• Apart from the offences under Part 6 of the Bill which relate to investigation, imprisonment is only imposed under clause 20(2) and (5) where information in sales brochure is not accurate in every material respect, under clauses 60, 65 and 66 where there is a commission of the offence of publication of an advertisement containing false or misleading information, misrepresentation or dissemination of false or misleading information.• On clause 20(2) and (5), the defence under clause 67 should be sufficient safeguard for the person concerned if due diligence is done.

(L) Penalty Proposals and Liability of Officers

Organizations/Individuals	Comments/Issues	Government's Response
		<ul style="list-style-type: none">• On sales brochures, since it is the most important source of property information to prospective purchasers, we consider it is essential that information contained therein must be accurate. Imprisonment is therefore proposed for non-compliance to achieve an effective deterrent effect.• For the offences of publication of an advertisement containing false or misleading information, misrepresentation and dissemination of false or misleading information, the prosecution will need to prove that the relevant mens rea in respect of the offence.
The Law Society of Hong Kong	<ul style="list-style-type: none">• In view of the magnitude of the offence of “advertisement must not contain false or misleading information” (i.e. a maximum fine of \$5 million and 7 years imprisonment), the charge should be limited to cases which would cause actual financial loss of a sufficient large amount.	<ul style="list-style-type: none">• To enhance consumer protection, it is necessary that the information provided in advertisements promoting the sale of first-hand residential properties is correct and not misleading.• To achieve the necessary deterrent effect, the charges should not be limited to those cases which cause actual financial loss.

(L) Penalty Proposals and Liability of Officers		
Organizations/Individuals	Comments/Issues	Government's Response
		<ul style="list-style-type: none"> The \$5 million fine and 7 years imprisonment are the maximum penalty. The court will decide on the level of penalty to be imposed on a case-by-case basis.
The Law Society of Hong Kong	<ul style="list-style-type: none"> The Bills fails to make the holding company of the vendor liable. 	<ul style="list-style-type: none"> Clause 72 of the Bill provides that the officers of holding company may also be held liable if it is proved that he/she has given consent to the commission of the offence.
The Law Society of Hong Kong	<ul style="list-style-type: none"> The mental threshold of "reckless" in clause 72 is too low. Consent or connivance should be sufficient. 	<ul style="list-style-type: none"> The clause on liability of officers is modeled on SFO where the threshold of "reckless" is included. We consider it appropriate to retain this threshold in the Bill.
The Hong Kong Conveyancing and Property Law Association Limited The Law Society of Hong Kong	<ul style="list-style-type: none"> Concerned that solicitors acting for the vendor may be caught by the provisions concerning misrepresentation and dissemination of false or misleading information. The solicitors may not be able to obtain express written confirmation or verification from the developer as to the truth of all information which the 	<ul style="list-style-type: none"> According to the current drafting of clause 66 of the Bill, the prosecution will need to prove that the person knows that, or is reckless as to whether, the information is false or misleading as to a material fact. According to the test of recklessness in <u>Sin Kam Wah & Another v. HKSAR</u> (FACC 14/2004), the

(L) Penalty Proposals and Liability of Officers

Organizations/Individuals	Comments/Issues	Government's Response
	<p>developers provide. Suggest a general exemption for solicitors.</p> <ul style="list-style-type: none">• Professionals may be held criminally liable for their negligence or mistakes, in view of clause 66 of the Bill and section 89 of the Criminal Procedures Ordinance (Cap. 221).	<p>prosecution had to prove that “the defendant’s state of mind was culpable in that he acted recklessly in respect of a circumstance if he was aware of a risk which did or would exist, or in respect of a result if he was aware of a risk that it would occur, and it was, in the circumstances known to him, unreasonable to take the risk”, and “[c]onversely, a defendant could not be regarded as culpable so as to be convicted of the offence if, due to his age or personal characteristics, he genuinely did not appreciate or foresee the risks involved in his actions”.</p> <ul style="list-style-type: none">• As for the commission of an offence due to the mistake of a third party or accident or some other cause beyond a person's control, it is fact sensitive and no general exemption should be granted. The clause does not intend to catch professional for their mere negligence or mistake. We do not see the need to create additional defence provisions exclusively for professionals.• The offence under section 89 of Cap. 221 requires the proof of an accessory’s intent to aid, abet,

(L) Penalty Proposals and Liability of Officers

Organizations/Individuals	Comments/Issues	Government's Response
		<p>counsel or procure the commission of an offence by the principal offender. Where the principal offence is of strict liability, there were rulings in other jurisdictions that negligence or recklessness was not regarded as sufficient mens rea for complicity. The offence of aiding and abetting is not intended to catch professionals who by mere negligence or mistake in giving advice aided and abetted the principal in committing a strict liability offence.</p> <ul style="list-style-type: none">• This contrasts in the situation where an accessory does not actually desire to assist or encourage the commission of an offence by the principal offender but knows that his actions are extremely likely or virtually certain to have that result, then the accessory may have the requisite intent to aid and abet. Therefore, we cannot just give a blanket exemption to professionals.

(M) Enforcement Authority		
Organizations/Individuals	Comments/Issues	Government's Response
The Real Estate Developers Association of Hong Kong	<ul style="list-style-type: none"> The enforcement authority should be transformed into an independent statutory body within a specified time limit. 	<ul style="list-style-type: none"> To facilitate early implementation of the legislation and to maximize the use of public resources, we propose that an enforcement authority be set up under the Transport and Housing Bureau (THB). The Government will however keep open the option of replacing the enforcement authority with an independent statutory body for performing similar functions at an appropriate time.
Property Agencies Association Limited	<ul style="list-style-type: none"> An independent enforcement authority should be set up with membership from different stakeholders, including the legal profession and the trades. 	
Consumer Council	<ul style="list-style-type: none"> The Bill should include express provisions that the enforcement authority will handle complaints and publish relevant complaint statistics and investigation results. 	<ul style="list-style-type: none"> The functions of the enforcement authority as stipulated under clause 75 of the Bill include administering the provisions of the Ordinance and supervising compliance with Parts 2, 3 and 4 of the Ordinance. Handling complaints is undoubtedly covered under those functions. We consider it not necessary to include an expression provision for this function. The enforcement authority will publish information and statistics on complaint and investigation as appropriate from time to time.

(M) Enforcement Authority		
Organizations/Individuals	Comments/Issues	Government's Response
The Professional Commons	<ul style="list-style-type: none"> The enforcement authority should have the power to initiate civil proceedings 	<ul style="list-style-type: none"> At present, there is already mechanism to help buyers of first-hand residential properties to initiate civil proceedings against the vendors. Upon receipt of complaints from first-hand residential property purchasers, the Consumer Council will look into the complaint cases and assist the parties to resolve their disputes as far as possible. Consumers may apply to the Consumer Legal Action Fund (CLAF) for assistance. The CLAF will provide financial support and legal assistance to meritorious cases which relate to consumer transactions and involves significant public interest or injustice. The Government will continue to closely liaise with CLAF's trustee, i.e. Consumer Council, to monitor the financial position of CLAF. Separately, the Home Affairs Bureau has proposed expanding the scope of the Supplementary Legal Aid Scheme (SLAS)¹ under the Legal Aid
The Hong Kong Conveyancing and Property Law Association Limited	<ul style="list-style-type: none"> Suggest provide a method of summary quick relief to those purchasers against the relevant offending developer vendor for the loss and damages they suffered. 	

¹ SLAS came into operation in 1984 and aimed at providing legal assistance to people whose financial resources exceeded the upper limit allowed under Ordinary Legal Aid Scheme (i.e. \$260,000 at present), but below a prescribed amount (i.e. \$1.3 million at present). SLAS is a self-financing scheme which draws its funds from contributions from aided persons on the basis of the damages awarded, the costs recovered in successful cases and the application fees payable by applicants.

(M) Enforcement Authority		
Organizations/Individuals	Comments/Issues	Government's Response
		<p>Ordinance (Cap. 91) to cover monetary claims exceeding \$60,000 against vendors in the sale of first-hand completed or uncompleted residential properties. Buyers of first-hand residential properties who are eligible may apply. The Secretary for Home Affairs has given notice to move a motion at the Legislative Council (LegCo) for the passage of a resolution under the Legal Aid Ordinance to effect the expansion of the scope. The proposed resolution is now being considered by a LegCo Subcommittee. Subject to the passage of the proposed resolution by LegCo, and the approval of subsequent subsidiary legislation amendments, it is expected that the expanded scope could take effect in mid-2012.</p>
Hong Kong Institute of Real Estate Administrators	<ul style="list-style-type: none"> To facilitate compliance with the Bill, the enforcement authority should work out clear guidelines for the trade to follow. Such guidelines should be subject to public consultation. 	<ul style="list-style-type: none"> According to clause 76 of the Bill, the enforcement authority has the power to issue guidelines providing guidance on the operation of the proposed legislation. The enforcement authority will consult the stakeholders on the guidelines as appropriate.

(M) Enforcement Authority		
Organizations/Individuals	Comments/Issues	Government's Response
The Hong Kong Conveyancing and Property Law Association Limited	<ul style="list-style-type: none"> Clause 79 of the Bill provides for investigation powers for suspected contravention. Clause 80 provides for offences relating to clause 79. Clause 82 deals with the use of incriminatory evidence in proceedings. In the absence of any express overriding provision in the Bill, it appears that legal professional privilege which is a common law right to protect confidential communications between lawyers and their clients from being disclosed without the permission of the clients will be subrogated. The clauses seem to have also taken away the right to remain silent which is guaranteed by the Basic Law. 	<ul style="list-style-type: none"> On the right to silence, the protection afforded by the Hong Kong Bill of Rights to the privilege against self-incrimination is not absolute. A derogation from it can be justified if it is not a disproportionate response to a matter of major concern and does not undermine an accused's right to a fair trial viewed in the round. Clause 79, read with clause 80, abrogates the privilege against self-incrimination but clause 82 provides that if the answer or response might tend to incriminate the person, the answer or response is not admissible in evidence against that person in other criminal proceedings. The solution adopted in Part 6 Division 2 of the Bill is consistent with the right to a fair trial. The Bill strikes a fair balance by allowing the Enforcement Authority to abrogate the privilege but subjecting the elicited evidence to a direct use prohibition. Legal professional privilege is protected by Article 35 of the Basic Law which guarantees the right to confidential legal advice. The rule is therefore entrenched in the Basic Law and has a protected status. The Bill does not contain any express

(M) Enforcement Authority		
Organizations/Individuals	Comments/Issues	Government's Response
		words that abrogate the right of a person to rely on legal professional privilege.

(N) Electronic Database		
Organizations/Individuals	Comments/Issues	Government's Response
<p>Hong Kong Chamber of Professional Property Consultants Limited</p> <p>Property Agencies Association Limited</p>	<ul style="list-style-type: none"> • Should include information on both first-hand and second-hand properties in a central database. 	<ul style="list-style-type: none"> • The electronic database to be set up by the enforcement authority will focus on providing information on the first-hand residential property market. We will review the function of the database from time to time after its establishment.

(O) Other Comments		
Organizations/Individuals	Comments/Issues	Government's Response
The Real Estate Developers Association of Hong Kong	<ul style="list-style-type: none"> It is highly impracticable to set out all dimensions of the furniture in the floor plans (Clause 46 of the Bill). 	<ul style="list-style-type: none"> Clause 46 of the Bill refers to <u>floor plans which the vendor may provide outside sales brochures</u>. If the vendor chooses to do so, he has to comply with the proposed requirements as set out in clause 46, namely that floor plan must show the scale to which it is drawn. Also, if the vendor chooses to show furniture on that floor plan, the dimensions of the furniture must be shown on the floor plan.
The Law Society of Hong Kong	<ul style="list-style-type: none"> “Saturday” is counted as a “working day” in the Bill while it is not regarded as a “business day” for the purpose of the ASP. Saturday should not be counted as a “working day” under the Bill as many law firms in Hong Kong are not open for business on Saturdays. 	<ul style="list-style-type: none"> We note the Law Society of Hong Kong’s concern that many law firms in Hong Kong are not open for business on Saturdays. We will consider stipulating in the Bill that “Saturday” is not counted as a “working day” for the purpose of signing an ASP after the signing of PASP.
The Law Society of Hong Kong	<ul style="list-style-type: none"> The definition of “residential property” in clause 6 should exclude serviced apartments or hotel. 	<ul style="list-style-type: none"> We note that under the definition of “residential property” (clause 6 of the Bill) in the Bill as currently drafted, hotel may fall under the definition of a “residential property”. It is not our intention to regulate the sale of a first-hand hotel. We will

(O) Other Comments		
Organizations/Individuals	Comments/Issues	Government's Response
		propose Committee Stage Amendments to refine clause 6 of the Bill for the Bills Committee's consideration.
The Law Society of Hong Kong	<ul style="list-style-type: none"> Properties are not in a viewing condition even after the issuance of OP. The definition of "completed property" under this context should be amended as appropriate. 	<ul style="list-style-type: none"> For consumer protection, we consider that prospective purchasers should be arranged to view the completed residential properties that they would like to purchase. Taking into account that a unit is safe for occupation after the issuance of OP, we consider using OP as the cut-off time appropriate. We have not stipulated that the unit for viewing must be equivalent to the standard for handing over to the buyer (交樓標準). Though the completed flats available for viewing may not yet have the fittings the finishes completed and appliances available, it may still be useful for prospective purchasers to view them to get a feel of their orientation and window view. The Bill provides that if it is not reasonably practicable to view a particular unit, the vendor may arrange a comparable unit for viewing. If it is also not reasonably practicable to arrange a comparable

(O) Other Comments		
Organizations/Individuals	Comments/Issues	Government's Response
		unit for viewing, the vendor may obtain a written waiver from the prospective purchaser.
The Law Society of Hong Kong	<ul style="list-style-type: none"> Some sales practices in Part 3 should be removed and implemented through the issuance of guidelines. 	<ul style="list-style-type: none"> There is a general public view that the existing administrative measures and practices through the Consent Scheme and the REDA's guidelines are insufficient and that consumer protection in respect of the sale of first-hand residential properties should be enhanced through regulation by legislation. We do not consider it appropriate to implement the requirements on sales practices in part 3 of the Bill through the issuance of guidelines.
The Law Society of Hong Kong	<ul style="list-style-type: none"> The Bill does not include transitional provisions. Should consider making special arrangements for the following – <ul style="list-style-type: none"> (a) the ASP already approved by the Legal Advisory and Conveyancing Office (LACO) or already annexed to a statutory declaration by a partner of a law firm and registered at the Land Registry; (b) Show flats already built by a vendor and 	<ul style="list-style-type: none"> After the passage of the Bill, we will need about 12 months to set up the enforcement authority to implement the legislation. There will therefore be a reasonably long period of time for the vendors to prepare for compliance with the legislation. As regards the specific examples quoted – <ul style="list-style-type: none"> (a) THB will liaise with LACO to review the current requirements under the Consent Scheme so as to prepare for compliance with the

(O) Other Comments		
Organizations/Individuals	Comments/Issues	Government's Response
	<p>already opened for viewing; and (c) Sales brochure printed before the effective date of the Bill.</p>	<p>legislation.</p> <p>(b, c) On show flats and sales brochure, as explained above, we consider the vendors should have enough time to make the necessary preparation given there will be 12 months lead time between the passage of the Bill and the implementation of the new legislation.</p>
Civic Party	<ul style="list-style-type: none"> To consider expanding the scope of Part 4 (clauses 65 and 66) to misrepresentation and dissemination of false or misleading information in relation to the sale of overseas residential properties conducted in Hong Kong. 	<ul style="list-style-type: none"> The objective of the Bill is to regulate the sale of first-hand residential properties situated in Hong Kong. The Bill has been drawn up after an extensive and detailed discussion over the past one and a half years and based on the provisions under the Consent Scheme and the guidelines issued by REDA. The Bill provides a holistic and effective framework to regulate the sale of first-hand residential properties situated in Hong Kong. Regulating the sale of overseas residential properties conducted in Hong Kong is a completely different subject, with different issues, that will require careful consideration. This is a matter best pursued separately.
The Hong Kong Institute of Estate Agents	<ul style="list-style-type: none"> The proposed legislation should also regulate the sale of overseas residential properties in Hong Kong. 	

(O) Other Comments		
Organizations/Individuals	Comments/Issues	Government's Response
		<ul style="list-style-type: none"> • We have carefully considered the proposal for expanding the scope of Part 4 (clauses 65 and 66) of the Bill to misrepresentation and dissemination of false or misleading information in relation to the sale of overseas residential properties conducted in Hong Kong. Our view is that it will involve more than just adding a provision to stipulate that clauses 65 and 66 of the Bill will also apply to non-Hong Kong residential properties, as we need to define “first-hand residential properties” in the context of non-Hong Kong residential properties which is not likely to be straight-forward. Also, we will need to give a full examination of all the possible issues relating to the sale of overseas residential properties conducted in Hong Kong and cater for those scenarios in the Bill. It is an exercise which will take considerable time and it is not possible for us to carry out such an exercise given the time available. • We maintain our view that it is inappropriate to single out two clauses from the Bill and apply them to other types of residential properties. Taking into account that the public would like to see the early

(O) Other Comments		
Organizations/Individuals	Comments/Issues	Government's Response
		enactment of the proposed legislation, we should focus on regulating the sale of first-hand residential properties situated in Hong Kong.
Civic Party	<ul style="list-style-type: none"> Once a PASP is signed, the concerned residential property will not be regarded as a first-hand residential property for the purpose of the Bill. Should review whether it would create loophole for the vendor to circumvent the legislation. 	<ul style="list-style-type: none"> It is our policy intention that the Bill should apply to residential properties <u>in respect of which no PASP, no ASP and no assignment has ever been entered into and made.</u> We note that Clauses 10(1) and 11 of the Bill as currently drafted does not reflect this intention clearly. We will submit draft CSA on this to the Bills Committee for consideration. A specified residential property with an effective PASP and ASP will be no different from a second-hand residential property. Sale of second-hand residential properties will not be regulated under the Bill. Clause 49 of the Bill specifies that if a person does not execute an ASP in respect of a specified residential property within three working days after the date on which the person enters into the PASP, the PASP is terminated. According to clause 11(2), if a PASP (to be included under a Committee Stage

(O) Other Comments		
Organizations/Individuals	Comments/Issues	Government's Response
		Amendment) is terminated, the legislation will apply to that residential property again. We consider it is highly unlikely that vendors may manipulate the signing of a PASP to circumvent the legislation.
Mr Yeung Wai-sing, Member of Eastern District Council	<ul style="list-style-type: none"> Should provide a cross-section plan and other relevant plans for the reference of prospective purchasers. 	<ul style="list-style-type: none"> Vendors are required under clause 18 of Schedule 1 to the Bill to provide a cross-section plan, clause 18 (2)(f) of the Bill to provide a location plan, and clause 18 (2) (i) of the Bill to provide a layout plan of the development in the sales brochure.
Hong Kong Chamber of Professional Property Consultants Limited	<ul style="list-style-type: none"> Purchasers are not represented by their own estate agents in the sale of first-hand uncompleted flats. The current draft of the Bill has not addressed this point. 	<ul style="list-style-type: none"> Clause 28(8) of the Bill requires vendors to state in the price list that a person may appoint its own estate agent, or may not necessarily have to appoint any estate agent, to act in the purchase of any residential properties.